

AMENDED IN ASSEMBLY JUNE 20, 2006

AMENDED IN ASSEMBLY JUNE 13, 2006

AMENDED IN SENATE MARCH 27, 2006

## SENATE BILL

No. 1395

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### Introduced by Senator Ducheny

February 22, 2006

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An act to add Section 21099 to the Public Resources Code, relating to environmental quality.

#### LEGISLATIVE COUNSEL'S DIGEST

SB 1395, as amended, Ducheny. Environmental quality: Native American sites.

(1) The California Environmental Quality Act (CEQA) requires a lead agency to evaluate whether an activity is a project subject to CEQA or comes within an exemption, and if the activity is determined to be a project to prepare, or cause to be prepared, and certify the completion of, an environmental impact report or to adopt a negative declaration, as required. CEQA provides for specified exemptions from its provisions.

This bill would require a lead agency that determines that a project is exempt from CEQA and may ~~directly or indirectly~~ *have a direct or reasonably foreseeable indirect* affect on a California Native American prehistoric, archeological, cultural, spiritual, or ceremonial place, as specified, to notify, as specified, the Native American tribes ~~for whom the particular site holds relevance identified by the Native American Heritage Commission.~~ *The bill for a project with a timeline that exceeds 30 days would require the lead agency to consult with a Native American tribe on a specified contact list, regarding the*

~~potential direct or indirect affect on that place by the proposed project.~~  
*The bill would require, where a notified tribe requests consultation for a project with a timeline that exceeds 30 days, the lead agency to begin and complete the consultation within a specified time period. The consultation would be for the purpose of protecting that place regarding the potential direct or reasonably foreseeable indirect effects by the proposed project.*

(2) Because this bill would impose new duties on local governments with respect to consulting with a Native American tribe and providing the tribe with a notice of exemption, the bill would create a state-mandated local program.

(3) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.  
 State-mandated local program: yes.

*The people of the State of California do enact as follows:*

1 SECTION 1. Section 21099 is added to the Public Resources  
 2 Code, to read:

3 21099. If a lead agency determines that a project is exempt  
 4 from this division and may ~~directly or indirectly affect~~ *have a*  
 5 *direct or reasonably foreseeable indirect effect on* a California  
 6 Native American prehistoric, archeological, cultural, spiritual, or  
 7 ceremonial place, ~~including those places as~~ described in Sections  
 8 5097.9 and 5097.993, or listed or determined eligible for listing  
 9 on the California or National Registers of Historic Places, the  
 10 lead agency shall do the following:

11 (a) Within 10 days of the determination that the project is ~~not~~  
 12 ~~subject to this division, notify in writing all Native American~~  
 13 ~~tribes, for whom the California Native American Heritage~~  
 14 ~~Commission identifies the particular site holds relevance, of the~~  
 15 *exempt from this division, notify in writing all Native American*  
 16 *tribes, identified by the California Native American Heritage*  
 17 *Commission regarding this site, of the following:*

18 (1) The location of the project.

1 (2) A detailed description of the project.

2 ~~(3) The justification for the exemption from this division.~~

3 ~~(4) A description of the potential effects of the project on the~~  
4 ~~Native American site.~~

5 ~~(5) A list of all alternatives to the project that were considered~~  
6 ~~by the lead agency.~~

7 *(3) Identification and a brief explanation of the applicable*  
8 *exemptions to this division.*

9 ~~(6)–~~

10 (4) A single point of contact at the lead agency for use by a  
11 tribe should they wish to consult with the lead agency on the  
12 project.

13 (b) (1) ~~For~~ *If a tribe notified pursuant to this section contacts*  
14 *the lead agency to request consultation for a project with a*  
15 *timeline for design, planning, and construction that exceeds 30*  
16 *days, the lead agency shall consult with a Native American tribe*  
17 *on the contact list maintained by the California Native American*  
18 *Heritage Commission to protect begin consultation within 15*  
19 *days of the determination of exemption and complete*  
20 *consultation within 30 days of the determination of exemption.*  
21 *Consultation is for the purpose of protecting that California*  
22 *Native American prehistoric, archeological, cultural, spiritual, or*  
23 *ceremonial place, regarding the potential direct or indirect effect*  
24 *reasonably foreseeable indirect effect on that place by the*  
25 *proposed project.*

26 (2) For purposes of this section, consultation means the  
27 meaningful and timely process of seeking, discussing, and  
28 considering carefully the views of others, in a manner that is  
29 cognizant of all parties' cultural values, and where feasible,  
30 seeking agreement. Consultation includes recognizing a tribe's  
31 potential need for confidentiality with respect to places that have  
32 traditional tribal cultural significance.

33 SEC. 2. No reimbursement is required by this act pursuant to  
34 Section 6 of Article XIII B of the California Constitution because  
35 a local agency or school district has the authority to levy service  
36 charges, fees, or assessments sufficient to pay for the program or  
37 level of service mandated by this act, within the meaning of  
38 Section 17556 of the Government Code.

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